Gujarat High Court
Ramdevsing V. Chudasma vs Hansrajbhai V. Kodala on 4 August, 1998
Equivalent citations: 1999 ACJ 1129, (1999) 1 GLR 631
Author: S Soni
Bench: S Soni, H Shelat

JUDGMENT S.M. Soni, J.

1. The appellants-original opponents in Claim Case no. 776/95 pending before the Motor Accident Claims Tribunal (Main), Rajkot have by this appeal challenged the interim award of compensation dated 30-4-98 passed under Section 163-A of the Motor Vehicles Act, 1988.

2. Claim Case no. 776/95 came to be filed by present respondents as original applicants/claimants on the following facts:

One Mayur minor son aged about 6 years of the claimants died of injuries sustained by him by a Motor Vehicle being Luxury Bus no. GJ-3 T 9815 driven by appellant no. 1, owned by appellant no. 2 and insured with appellant no. 3. The claim is filed for an amount of Rs. 2,50,000/-. However, claimants filed application Exh.4 to award them compensation pending the claim application under Section 163-A of the Motor Vehicles Act, 1988("Act" for short). The Tribunal after considering the fact of accident, age of victim and income of victim, passed the award under Section 163-A of the Act and the same is under challenge in this appeal.

3. The main challenge of the appellant to the award is on the ground that the same is passed without affording any opportunity to the opponents either to put up their defence or to dispute their liability and also to dispute the factors on which the claim is based. It is also the ground that Section 163-A is not meant for interim compensation but is meant for full and final compensation on the heads covered in structure formula and is an alternative to Section 166 of the Act. It is challenged also on the ground that grant of award under Section 163-A would be so highly detrimental to the opponents that they would be foisted with liability without having any opportunity to defend their case. They have also challenged the award on the question of quantum of compensation. They have also contended that before deciding the claim under Section 163-A of the Act, negligence of the victim and that of other vehicle involved, if any, is also required to be decided. In the absence of any decision for the same, the conclusion that may be reached to come to just compensation would not be fair and legal one. It is also contended that to determine just compensation issue of quantum is required to be raised and decided as schedule to the Act is only a guide as held by the Supreme Court in the case of U.P.State Road Transport Corporation vs. Trilokchandra and Others,(1996 A.C.J. 831).

4. As the question raised by the learned Advocate Mr. Mehta for the appellants are likely to effect number of appeals or proceedings often arising under Sec. 163A of the Act and/or pending before this Court and pending before the Tribunal, we have orally invited the Advocates practising in the High Court if any of them desired to address us mainly on following questions which arise according to us in this appeal.

1. Whether compensation claimed under Section 163-A is adhoc, interim or a stop gap arrangement? If not,

2. Whether the compensation that may be awarded under Section 163-A is a final award?

3. Whether Claim Application under section 163-A is an interim application. If not, whether it is a substantive one?

4. Whether the Claim Application under Section 163-A is required to be filed by way of an interim application in a substantive application under Section 166 of the Act?

5. Whether while deciding Claim Application under Section 163-A, is it open to the tort-feasor and its authorised insurer to prove negligence of the victim or other vehicle?

We have heard the learned Advocates for the parties and the interveners who have also submitted their written arguments.

5. To appreciate the diverse contentions raised by the learned Advocates, it is necessary to know the history as to how Section 163-A came to be incorporated by the parliament in the Act. It is said that road accidents are one of the top killers in our country, especially when, the drivers operate indiscriminately and/or haphazardly. This proverbial recklessness often persuades the Court to draw an initial presumption in several cases based on doctrine of res ipsa loquitur. It therefore becomes obligatory on the Accident Claim Tribunals to take special care to see that innocent victims do not suffer and the drivers and owners of vehicles do not escape of the liability merely because of some doubt here or some obscurity there on misconstruction.

6. Initially claims based on tort were filed under common law in Civil Courts. Torts arising out of motor vehicle have increased. The legislature thought it fit to provide a special forum for the same and that is how, it appears that Section 110 was added in Motor Vehicle Act, 1939. Prior to addition of Section 110 in the Motor Vehicles Act there existed Section 110 but under the said provision powers to appoint persons to investigate and report about motor accidents and it was with the State Government, but the officers so appointed were not empowered to adjudicate on the liability of the insurer or on the amount of damages to be awarded except at the express desire of the Insurance Company concerned. Said provision did not help persons with limited means in preferring claims on account of injury or death because a Court decree has to be obtained before the obligation of the Insurance Company to meet the claims can be enforced. It was therefore proposed to empower State Government to appoint Motor Accident Claims Tribunal to determine and award damages and that is how Section 110 to 110F came to be inserted in the Act. Prior to this addition compensation in respect of accidents involving the death of or bodily injury to persons arising out of use of motor vehicle was justiciable in Civil Courts. That remedy was not only heavily burdened with very heavy Court fees but also tardy in its working. It could not speedily deal with the large number of claims of aggrieved persons and to simplify the procedure and to get the speedy relief to the claimants a procedure was involved in the Motor Vehicle Act so that a claim for compensation can be made by a simple application to the tribunal without payment of ad valorem Court fees. Though a special

forum was provided, all the original defences and procedure remained more particularly of strict liability. It was necessary for the claimants to prove negligence of the other side and while so proving it again remained open for the tort-feeasors to bring any contributory negligence by way of defence. Simple application which was intended to be decided by the legislature became again clumsy and complicated resulting into delay in awarding of compensation and frustration too. Such frustration and expectations of the people and social obligation were echoed by the Courts of different States and even the Apex Court in different decisions suggesting that for quicker soothing and fulfilling social obligation there shall be a provision for no fault liability.

7. Even by passage of time, the law of torts also came to be changed to fit in or suit in the demand of the day. It was rightly suggested and brought to our notice by learned Advocate Mr. Pandya the following observation at page 3 and 4 of " The Law of Torts" by John G. Fleming, Seventh Edition:

" The task confronting the law of torts is, therefore, how best to allocate these losses, in the interest of the public good. For the solution of this problem, no simple and all-embracing formula can be offered, because the concrete fact problems are manifold and often complex. To start with, much may depend on the kind of harm for which reparation is sought. Early law, as we might expect, was in the main content with affording protection against bodily injury and physical damage to a persons tangible property. Somewhat later, it offered a remedy for injury to reputation from libel or slander, and now in our more highly sophisticated culture, demands are being made for legal protection against less palpable injuries, like indignity or emotional distress. Obviously different considerations when dealing with such diverse injuries. It is one thing to require compensation for a brutal assault fracturing the victim's skull, but quite another for mere fright or distress at the sight of a street accident. The possibility of opening the door too widely to faked claims, suspicions concerning the reliability of medical evidence and so forth may militate against a remedy for mental disturbance, while little hesitation would obviously be felt in allowing compensation for a broken arm in a road collision."

8. He has also referred to the following passage under the caption " Policies of Tort Liability" which reads as under:

"The history of the law of torts has hinged on the tension between two basic interests of individuals the interest in security and the interest in freedom of action. The first demands that one who has been hurt should be compensated by the injurer regardless of the latter's motivation and purpose; the second that the injurer should at best be held responsible only when his activity was intentionally wrongful or indicated an undue lack of consideration for others. The former is content with imposing liability for faultless causation; the latter insists on "fault" or " culpability".

9. He has also quoted the following under the caption of " Individual Responsibility":

" With the blessings of the moral philosophy of individualism (Kant) and the economic postulate of laissez-faire, the Courts attached increasing importance to freedom of action and ultimately yielded to the general dogma of "no liability without fault". This movement coincided with, and was undoubtedly influenced by the demands of the Industrial Revolution"

10. Under the caption " Loss spreading" he has quoted:

" This approach suggests that a proper function of tort law should be not so much the shifting as the distribution of losses typically involved in modern living. Acceptance of this view point must inevitably change evaluations of what is a fair allocation of risks. We have seen that no social value attaches to the mere shifting of loss so long as its effect is merely to impoverish one individual for the benefit of another. In order to warrant such a result, the law had to find a compelling reason for subordinating the defendant's interest to the plaintiffs' and inevitably focussed attention on the culpability of the individual participants in the accident. On the other hand, if a certain type of loss is looked upon as the more or less inevitable by-product of a desirable but dangerous activity, it may well be just to distribute its costs among all who benefit from that activity, although it would be unfair to impose it upon each or any one of those individuals who happened to be the faultless instruments causing it. Such a basis for administering losses has been variously described as " collectivization of losses" or " loss distribution". It leads to the selection of defendants, not necessarily because they happen to be morally blameworthy, but because they represent a conduit for " internalizing" the accidents cost to the risk creating activity and distributing it among its beneficiaries through higher prices and/or liability insurance."

11. He has also quoted the following from Chapter 15 on " Strict Liability";

" Once established the fault theory struck deep roots. It stimulated the growth of negligence as an independent basis of liability until it eventually became the principal touchstone for the adjustment of losses in the modern law of torts, permeating such old fashioned concepts as trespass and nuisance and not even shrinking from rationalizing vicarious liability as a liability for fault." No liability without fault" became the banner of an individualistic society set on commercial exploitation and self help. Such fragmentary area of law, in which the strict liability of earlier precedent managed to resist the pressure for reorientation, like responsibility for the escape of fire and animals, were thought of as vestigial anomalies of an uncivilized past when individual freedom was less esteemed than in the new era of middle class democracy.

Inevitably impetus of this movement began to subside as the principal reason for repressing strict liability lost its force with the growing strength of industry and its ability to distribute the cost of tort losses by insurance and higher prices. Leaving behind the 19th century philosophy of laissez-faire public opinion has become- because it could afford to be- more social minded. Society is today much more concerned in salvage and preservation than in acquisition and creation. Therefore, increasing consideration is being given to the compensatory aspect of tort law and to the social value of shifting accident losses by widely distributing their cost among those who benefit from the accident producing activity. It is realized that the result of letting accident losses lie where they fall is not only to impoverish the victim but ultimately to throw the loss on the community as a whole, which must in the last resort foot the bill of rehabilitation and income maintenance. In effect society and the victim, by paying the bill, subsidize the activity that produced the loss. Yet, it is difficult to see why a subsidy or exemption from payment of a normal cost should be offered to any particular section of the community, and it seems better public policy, in the framework of our existing social and economic system, to devise legal rules that will require each to bear the burden of its own costs. This

tendency has been inevitably reflected in a gradual return to strict liability, but unlike their early common law forerunners, these new instructions of " liability without fault" are justified by considerations of social and economic expediency of our own age."

12. Under the caption" Rationale of Strict Liability" he has quoted:

"Many activities now as heretofore, exact a high toll of life, limb and property. Faced with this situation, society may adopt any one of the three possible courses. It may proscribe the activity altogether as by a statute declaring it illegal or a court enjoining it as a nuisance. Alternatively, it may choose to incur the danger of the enterprise for the sake of its social utility, but forbid it to be carried on except under specified conditions or in a prescribed manner. Hence, the proliferation of safety statutes enforced by licensing, inspection, criminal penalties and the doctrine of negligence per se. Or it may decide to tolerate the activity on condition that it pay its way regardless of whether it is carried out carelessly or not. This is the solution of strict liability. The defendant is held liable not for any particular fault occurring in the course of the operation, but for the inevitable consequences of a dangerous activity which could be stigmatized as negligent on account of its foreseeably harmful potentialities, were it not for the fact that its generally beneficial character requires us to tolerate it in the public interest.

In one sense, strict liability is but another aspect of negligence, both being based on responsibility for the creation of an abnormal risk." " The hallmark of strict liability is therefore that it is imposed on lawful, not reprehensible activities."

" Moreover, strict liability is as yet unorganized and fragmentary in application. For one thing our Courts have openly endorsed it only in cases where the non-negligent creation of serious risk arises from an abnormal activity. This explains the exclusion of motoring(no less than of domestic plumbing), and is probably based on the view that if the risky activity is fairly common the incident of harm and of responsibility are so evenly matched that nothing would be gained by imposing strict liability. But advanced thought would reject so crude a balance sheet. Just as a major " public benefit" flowing from a hazardous activity like nuclear power stations and other public utilities) is no longer a good reason for leaving it unburdened but rather reinforces the wisdom of distributing the loss among its beneficiaries, so the very fact that it is widespread and exposes the community to a typical hazard may furnish a sufficient reason for tolerating it only on condition that it pay its own passage. This is particularly germane to such common hazards as motoring and flying."

13. Under the caption " Work and Road Accidents" he has quoted:

" Legislation has already introduced strict liability in a few distinct spheres. The most prominent is workers' compensation, which in Australia still follows the original British pattern of making the employer absolutely liable to pay compensation to employees suffering work injuries. In most other countries, this pseudo-tort model of strict liability, backed by compulsory liability insurances, has long been replaced by an independent insurance plan on the lines of, or integrated into, a system of social security. So also with respect to road accidents, early no-fault schemes adopted the pattern of strict liability with compulsory liability insurance, but modern reforms have favoured plans based

on first-party insurance or a centralized social security model."

14. Under the caption " The Future" he has quoted:

" Proposals to add other candidates to this growing list of no-fault compensation have been flourishing in recent years, including victims of drug and vaccine, medical and sporting accidents, research volunteers and victims of crime. Common features are that negligence is perceived as peculiarly deficient in one or mores respects in dealing with the particular compassion and that financing is relatively painless. This trend would portend a spreading mosaic of negligence and no-fault, perhaps an eventual replacement of all fault-based tort liability by a comprehensive compensation system for all accidents, as has occurred already in New Zealand."

15. He has cited before us the decision in the case of KESAVAN NAIR VS. STATE INSURANCE OFFICER (1971 ACJ 219) wherein Justice Krishna Iyer, as he then was, has observed in paragraph (4) as under:

" It is not altogether irrelevant to observe that motor vehicle accidents in the State are increasing at an alarming rate but that there is hardly any serious check by the concerned authorities to ensure careful driving. The innocent victim is faced with legal difficulties, in recovering damages. On account of the legal position laid down in Mangilal vs. Parasram the insurer is liable to pay only if the insured is liable to pay. It often times happen that a prosecution precedes a civil case and since the prosecution is in the control and direction of the police if it ends in an acquittal on account of the indifference in the conduct of the prosecution the insured pleads non liability and the insurer also sometimes escapes. Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurer, instead of its being restricted to cases where the vehicle operator has been shown to be negligent. This is more a matter for the legislature and not for the Court. But this is a lacuna in the law which I think it would be just to rectify."

16. This judgment appears to be the first signal to put the Government machinery in motion to think in the direction of introducing a provision for no fault liability.

17. In a judgment in the case of MARINE AND GENERAL INSURANCE CO. LTD. AND OTHERS VS. DR. BALKRISHNA RAMACHANDRA NAYAN (1976 ACJ 288), the Division Bench of the Bombay High Court has observed as under at paragraphs 51, 52, 54, 57 and 72:

" 51. The moment a motor vehicle is used and injury is caused, a liability to pay compensation arises, and the Tribunal can adjudicate upon that liability and determine `just' compensation. This can be on the general basis of ubi just ibi remedium in resepct of which we find the comment in Broom Legal Maxims, 10th edition, p.119:-

" The principle adopted by Courts of Law accordingly is, that the novelty of the particular complaint alleged in an action on the case is no objection, provided that an injury cognisable by law be shown to have been inflicted on the plaintiff, in which case, although there be no precedent, the common

law will judge according to the law of nature and the public good.."

"52. In my opinion, public good requires that everyone injured viz. by the use of a motor vehicle, must immediately get compensation for the injury. Every person has a right to safety and security of his person irrespective of fault or negligence or carelessness or efficient functioning of the motor vehicles. Every person has a right to claim compensation as that is the only way of remedying the injury caused to him in a modern urbanized, industrialized and automobile ridden life."

"54. Moreover, a look at the latest standard books on the Law of Torts also reveals that when and even if importing the notion of torts in determining the just compensation it is not necessary for the Tribunal to award damages only if the plaintiff proves negligence or any other tort recognized by well known books as species of torts."

"57. The time has now come when instead of involving the insurance company which is now, so far as this country is concerned, is in the public sector, and the citizens injured in automobile accidents, in costly and lengthy legislation, what is needed is a sure position in law. There is generally prolonged litigation in such cases. In the absence of any words used by the legislature to underpin the liability with respect to negligence or any other specific tort or tort generally that liability must be held to be in respect of injuries done or caused as a result of the use of motor vehicle unless there is some reason recognized by law for exempting the user from that liability."

18. The Bombay High Court has also relied on and referred to the judgment of the Kerala High Court in Kesavan Nair's case (Supra).

19. The Andhra Pradesh High Court in the case of HAJI ZAKARIA AND OTHERS VS. NAOSHIR CAMA AND OTHERS (1976 ACJ 320 has held as under:

" We will now refer to a few other decisions which throw light on the problem. In B.I.G. Insurance Co. v. Itbar Singh (Supra) the question of interpretation and the scope of section 96 arose. Sarkar J. speaking for the Court, made it very plain that the Court cannot add words to a section unless as it stands it is meaningless or of doubtful meaning. Applying this rule of interpretation, we will find section 95(i)(b) is neither meaningless nor has any doubt or ambiguity about it. Such being the case, the Court cannot add the words" in the event of rash and negligent driving" in section 95(i)(b). The Court further held that the insurer has been conferred a right under section 96(2) to be made a party to the suit and to defend it. Since that right is a creature of the statute, its contents and scope necessarily depends on the provisions of statute. Subsection (2) clearly provides that an insurer is not entitled to take any defence which is not specified in it and cannot be added to. The only manner of avoiding liability provided in subsection (2) is through the defences therein mentioned. In the instant case, the first respondent admits that the heirs of the deceased should be compensated and it is not open to the insurer that since there is no rash and negligent driving, the liability to compensate does not arise, since it is not one of the defences available to it under Section 96(2). The Supreme Court considered the object of Chapter VIII of the Motor Vehicles Act and the scope of section 95(1)(b) and section 96(2) in New Asiatic Insurance Co. v. Persumal Raghubar Dayal, J. who spoke for the Court, explained the object of Chapter VIII thus:

" Chapter VIII of the Act, it appears from the heading, makes provision for insurance of the vehicle against third party risks, that is to say, its provisions ensure that third parties who suffer on account of the user of the motor vehicles would be able to get damages for injuries suffered and that their liability to get the damages will not be dependent on the financial condition of the driver of the vehicle whose user led to the causing of the injuries. The provisions have to be construed in such a manner as to ensure this object of the enactment."

20. The learned Judge proceeds further to state:

"The policy must therefore provide insurance against any liability to third party incurred by that person when using that vehicle. The policy should therefore be with respect to that particular vehicle. It may, however, mention the person specifically or generally by specifying the class to which that person may belong, as it may not be possible to name specifically all the persons who may have to use the vehicle with the permission of the person owning the vehicle and effecting the policy of insurance. The policy of insurance contemplated by Section 94 therefore must be a policy by which a particular car is insured.

It was also laid down that once the company had undertaken liability to third parties incurred by the persons specified in the policy, the third parties right to recover any amount under or by virtue of the provisions of the Act is not affected by any condition in the policy. This clarification of the object of Chapter VIII and the liability of the insurer lends considerable support to the view we have expressed. We consequently hold that the liability of the insurer and consequently that of the insured does not cease to exist in the absence of proof of rash and negligent driving of the insured car. We reject the contention of the insurance company in this behalf.

We should not however, be understood as expressing any opinion on the question whether that liability to compensate would arise and exist in the event of the injured person being responsible for the accident or having contributed to it. We do not propose to decide that question as it does not arise here. There is no proof and no finding that the deceased was responsible for the accident or that he had contributed to it."

21. The Supreme Court in the case of MRS. MANJUSHRI RAHA AND OTHERS VS. B.L.GUPTA AND OTHERS (1977 ACJ 134) speaking through Justice Fazal Ali has observed as under at Paragraphs 1 and 10:

" 1. With the emergence of an ultra-modern age which had led to stride of progress in all spheres of life, we have switched from fast to faster vehicular traffic which has come as a boon to many, though some times in the case of some it has also proved to be a misfortune. Such are the cases of the victims of motor accidents resulting from rash and negligent driving which take away quite a number of precious lives of the people of our country. At a time when we are on the way to progress and prosperity, our country can ill-afford to lose so many precious lives every year, for though the percentage of deaths caused by motor accidents in other countries is high, in our own country the same is not by any means negligible, but is a factor to be reckoned with. Our law-makers being fully conscious of the expanding needs of our nation have passed laws and statutes to minimize motor

accidents and to provide for adequate compensation to the families who face serious socio economic problems if the main bread- earner loses his life in the motor accident. The time is ripe for serious consideration of creating non-fault liability. Having regard to the directive principles of State policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of motor vehicles, the nationalization of general insurance companies and the expanding trend towards nationalization of bus transport, the law of torts based on no-fault, needs reform. While section 110 of the Motor Vehicles Act, provides for the constitution of Claims Tribunals for determining the compensation payable, section 110-A provides for the procedure and circumstances under which the family of a victim of a major accident can get compensation and lays down the various norms, though not as exhaustively as it should have. The Courts, however, have spelt out and enunciated valuable principles from time to time which guide the determination of compensation in a particular situation. Unfortunately, however, Section 95(2)((d) of the Motor Vehicles Act, limits the compensation to be paid by an insurance company to Rs. 2000/-only in respect of death to any third party and this is one disconcerting aspect on which we shall have to say something in a later part of our judgment."

"10. While our Legislature has laws made to cover every possible situation, yet it is well nigh impossible to make provisions for all kinds of situations. Nevertheless where the social need of the hour requires that precious human lives lost in motor accidents leaving a trail of economic disaster in the shape of their unprovided for families call for special attention of the law makers to meet this social need by providing for heavy and adequate compensation particularly through Insurance Companies. It is true that while our law makers are the best Judges of the requirements of the society, yet it is indeed surprising that such an important aspect of the matter has missed their attention. Our country can ill-afford the loss of a precious life when we are building a progressive society and if any person engaged in industry, office, business or any other occupation dies, a void is created which is bound to result in a serious set back to the industry or occupation concerned. Apart from that death of a worker creates a serious economic problem for the family which he leaves behind. In these circumstances, it is only just and fair that the Legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in the accident, he gets a compensation of Rs. 1,00,000/- or like large sums, and yet when death comes to him not through a plane but through a motor vehicle, he is entitled to only Rs. 2000/-. Does it indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to choose a conveyance of a lesser value like a motor vehicle? Such an invidious distinction is absolutely shocking to any judicial or social conscience and yet section 95(2)(d) of the Motor Vehicles Act seems to suggest such a distinction. We hope and trust that our law-makers will give serious attention to this aspect of the matter and remove this serious lacuna in section 95(2)(d) of the Motor Vehicles Act. We would also like to suggest that instead of limiting the liability of the Insurance Companies to a specified sum of money as representing the value of human life, the amount should be left to be determined by a Court in the special circumstances of each case. We further hope our suggestions will be duly implemented and the observations of the highest Court of the country do not become a mere pious wish."

22. Again, the Supreme Court in the case of BISHAN DEVI AND ANOTHER VS. SIRBAKSH SINGH AND OTHERS (1979 ACJ 496) in paragraphs 17 and 19 have desired for a blanket liability by social insurance Company:

"17. We may point out that repeatedly suggestions have been made by this Court, several High Courts and Apex Court expressing the desirability of brining a social insurance which would provide for direct payment to the dependents of the victim. This Court in Minu b. Mehta and another v. Balkrishna Ramchandra Nayan and another, has referred to the decision of the Kerala High Court in Kesavan Nair v. State Insurance Officer where the High Court expressed itself thus: "Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurers."

23. The Madras High Court in M/s.Ruby Insurance Co.Ltd. vs. Govindraj and others has suggested the necessity or of having social insurance to provide cover for the claimants irrespective of proof of negligence to a limited extent say Rs. 250/- to Rs. 300/- a month.

In a recent decision in State of Haryana vs. Darshan Devi and others this Court observed:-

"Now that insurance against third party risk is compulsory and motor insurances is nationalized and transport itself is largely by State Undertakings the principle of no fault liability and on the spot settlement of claims should become national policy."

Unless these ideas are accepted by the legislature and embodied in appropriate enactments Courts are bound to administer and give effect to the law as it exists today."

"19. The insurance companies are now nationalized and the necessity for awarding lump sum payment to secure the interest of the dependents is no longer there. Regular monthly payments could be made through one of the nationalized banks nearest to the place of residence of the dependents. Payment of monthly installments and avoidance of lump sum payment would reduce substantially the burden on the insurer and consequently of the insured. Ordinarily in arriving at the lump sum payable, the Court takes the figure at about 12 years payment. Thus, in the case of monthly compensation of Rs. 250/-payable the lump sum arrived at would be between 30,000/- and 35,000/-. Regular monthly payment of Rs. 250/- can be made from the interest of the lump sum alone and the payment will be restricted only for the period of dependency of the several dependents. In most cases, it is seen that a lump sum payment is not to the advantage of the dependents as large part of it is frittered away during litigation and by payment to persons assisting in the litigation. It may also be provided that if the dependents are not satisfied with the minimum compensation payable they will be at liberty to pursue their remedies before the Motor Accident Claims Tribunal."

24. Again the Supreme Court in the case of STATE OF HARYANA VS DARSHANA DEVI AND OTHERS (1979 ACJ 205) speaking through Justice Krishna Iyer has observed as under at paragraphs 5 and 6 of the judgment:

"5. Two principles are involved. Access to Court is an aspect of social justice and the State has no rational litigation policy if it forgets this fundamental. Our perspective is best projected by Cappelletti, quoted by the Australian Law Reforms Commission:

" The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement- the most basic human right of a system which purports to guarantee legal right."

25. We should expand the jurisprudence of access to justice as an integral part of Social Justice and examinee the constitutionalism of court-fee levy as a facet of human rights highlighted in our Nation's Constitution. If the State itself should travesty this basic principle, in the teeth of Articles 14 and 39-A, where an indigent widow is involved a second look at its policy is overdue. The Court must give the benefit of doubt against levy of a price to enter the temple of justice until one day the whole issue of the validity of profit-making through sale of civil justice, disguised as court-fee, is fully reviewed by this Court. Before parting with this point we must express our poignant feeling that no State, it seems, has, as yet, framed rules to give effect to the beingnant provision of legal aid to the poor in order XXXIII, Rule 9-A, Civil Procedure Code, although several years have passed since the enactment. Parliament is strutified and the people are frustrated. Even after a law has been enacted for the benefit of the poor, the State does not bring into force by wilfful default in fulfilling the conditio sine qua non. It is a public duty of each great branch of Government to obey the rule of law and uphold the tryst with the Constitution by making rules to effectuate legislation meant to help the poor.

"6. The second principle the State of Haryana has unhappily failed to remember is its duty under Article 41 of the Constitution to render public assistance without litigation, in cases of disablement and undeserved want. It is a notorious fact that our highways are graveyards on a tragic sale, what with narrow, neglected roads, reckless unchecked drivers, heavy vehicular traffic and State Transport buses often inflicting the maximum casualties. Now that insurance against third party risk is compulsory and motor insurance is nationalized and transport itself is largely by State Undertakings, the principle of no fault liability and on-the-spot settlement of claims should become national policy. The victims as, here, are mostly below the poverty line and litigation is compounded misery. Hit-and-run cases are common and the time is ripe for the Court to examine whether no-fault liability is not implicit in the Motor Vehicles Act itself and for Parliament to make law in this behalf to remove all doubts. A long-ago Report of the Central Law Commission confined to hit-and-run cases of auto accident is gathering dust. The horrendous increase of highway casualties and the chronic neglect of rules of road-safety constrains us to recommend to the Central Law Commission and to Parliament to sensitize this tragic area of tort law and overhaul it humanistically."

26. Again, the Supreme Court in the case of N.K.V.BROS (P) LTD. VS. M. KARUMAL AND OTHERS (1980 ACJ 435 has observed in paragraph (3) of the judgment as under:

"3. Road Accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of RES ipsa loquitur. Accidents Claims Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable . The court should not succumb to niceties, technicalities and mystic maybes. We are emphasizing this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or due parsimony practised by Tribunals. We must remember that judicial Tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of Tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard."

27. Again, the Supreme Court in the case of M/S. CONCORD OF INDIA INSURANCE CO.LTD. VS. NIRMALA DEVI AND OTHERS (1980 ACJ 55) has observed as under at paragraphs (2) and (3) of the judgment:

"2. Medieval roads with treacherous dangers and total disrepair, explosive increase of heavy vehicles often terribly overloaded and without cautionary signals, reckless drivers crazy with speed and tipsy with spirituous potions, non-enforcement of traffic regulations designed for safety but offering opportunities for systematized corruption and little else and, as accumulative effect mounting highway accidents demand a new dimension to the law of torts through no-fault liability processual celerity and simplicity in compensation claims cases. Social justice, the command of the Constitution is being violated by the State itself by neglecting road repairs, ignoring deadly overloads and contesting liability after nationalizing the bulk of bus transport and the whole of general insurance business. The jurisprudence of the compensation for motor accidents must develop in the direction of no-fault liability and the determination of the quantum must be liberal, not niggardly since the law values life and limb in a free country in generous scales. In the present case, a doctor and his brother riding a motor cycle were hit by a jeep driver and both were killed. The fatal event occurred in November, 1971, but the Motor Accidents Claims tribunal delivered judgement five years later awarding sums of Rs. 80,000/- and Rs. 73,500/to the two sets of claimants."

"3. The delay of five years in such cases is a terrible commentary on the judicial process. If only no fault liability, automatic reporting by the police who investigate the accident is a statutory pro forma signed by the claimants and forwarded to the Tribunal as in Tamil Nadu and decentralized

empowerment of such tribunals in every district coupled with informal procedures and liberation from court fees and the sophisticated rules of evidence and burden of proof were introduced-easy and inexpensive if the State has the will to help the poor who mostly die in such accident- law's delays in this compassionate jurisdiction can be banished. Social justice in action is the measure of the State's constitutional sensitivity. Anyway, we have made these observations hopefully to help focus these observations of the Union and the States."

28. The Supreme Court in the case of Motor Owners Insurance Co.Ltd vs. Jadavji Keshavji Modi and Others, (981 ACJ 507) has observed as under at paragraph 26 of the judgment:

"26. We cannot part with this case without impressing upon the Government, once again, the urgent need to provide by law for the payment of reasonable amounts of compensation, without contest, to victims of road accidents. We find that road accidents involving passengers travelling by rail or public buses are usually followed by an official announcement of payment of ex gratia sums to victims, varying between five hundred and two thousand rupees or so. That is a niggardly recognitions of the State's obligation to its people, particularly so when the frequency of accidents involving the public transport system has increased beyond believable limits. The newspaper reports of August and September 1981 regarding deaths and injuries caused in such accidents have a sorry story to tell. But we need not reproduce figures depending upon newspaper assessment because, the newspaper of September 18, 1981, carry out the report of a statement made by the Union Minister of State for Shipping and Transport before the North Zone goods transport operators that 20,000 persons were killed and 1.5 lakh were injured in highway accidents during 1980. We wonder whether adequate compensation was paid to this large mass of suffering humanity. In any event the need to provide by law for the payment of adequate compensation without contest to such victims can no longer be denied or disputed. It was four years ago that this Court sounded a waning and a reminder in Manjushri Raha and others v. B.L. Gupta and others.

" With the emergence of an ultra-modern age which had led to stride of progress in all spheres of life, we have switched from fast to faster vehicular traffic which has come as a boon to many though some times in the case of some it has also proved to be a misfortune.....The time is ripe for serious consideration of creating no-fault liability. Having regard to the directive principles of State policy, the poverty of the ordinary run of victims of automobile accidents, the compulsory nature of insurance of motor vehicles, the nationalization of bus transport, the law of torts based on no-fault needs reform.

".....it is only just and fair that the Legislature should make a suitable provision so as to pay adequate compensation by properly evaluating the precious life of a citizen in its true perspective rather than devaluing human lives on the basis of an artificial mathematical formula. It is common knowledge that where a passenger travelling by a plane dies in an accident, he gets a compensation of Rs. 1,00,000/- or like large sums, and yet when death comes to him not through a plane but through a motor vehicle he is entitled only to Rs. 2,000/-. Does it indicate that the life of a passenger travelling by plane becomes more precious merely because he has chosen a particular conveyance and the value of his life is considerably reduced if he happens to chose a conveyance of lesser value like a motor vehicle? Such an invidious distinction is absolutely shocking to any judicial

or social conscience and yet section 95(2)(d) of the Motor Vehicles Act seems to suggest such a distinction. We hope and trust that our law-makers will give serious attention to this aspect of the matter and remove this serious lacuna in section 95(2)(d) of the Motor Vehicles Act. We would also like to suggest that instead of limiting the liability of the insurance companies to a specified sum of money as representing the value of human life, the amount should be left to be determined by a Court in the special circumstances of each case. We further hope our suggestions will be duly implemented and the observations of the highest Court of the country do not become a mere pious wish."

29. In the book entitled "Winfield and Jolowicz on Tort", 11th Edition relevant commentary reads as under:

"Personal injuries and death

30. Every year in the United Kingdom some 21,000 people diea as a result of injury and about three million are sufficiently seriosuly injured to lose four or more day's work. The vast majority of these deaths and injuries are accidental and the largest categories are accidents on the road, at work, and in the home. At prices prevailing on January 1, 1977, about pounds 827 m per annum is paid in various forms of compensation for these injuries of which more than half(pounds 421 m) comes from the social security system. The balance is shared more or less equally between the tort system (pounds 202 m) and other, predominantly private sources such as occupational sick pay and private insurance (pounds204m) Overall, therefore, the tort system accounts for no more than a quarter of all compensation paid but the relationship would be rather different if one examined particular categories of accidents. In the field of motor accidents, tort payments considerably exceed social security payments though the position is reversed with regard to work and other accidents. The ratio of tort to social security is not, of course, reflected in the proportion of beneficiaries of each system. The great majority of accident victims may expect to receive some sort of social security benefit but the proportion of those who recover tort damages is only about 6.5 per cent. In a large number of cases of minor injury the victim will not think it worth his while to pursue a tort claim; in many serious cases he will be unable to prove the breach of legal duty necessary to establish his claim against the defendant.

31. This is not a book about the law of compensation as a whole, but the student of tort cannot ignore the operation of the non-tort sources and we must accordingly attempt a survey of them and of their relationship with the tort system. The reader should also remember that in dealing with personal injuries the cost of provision of medical services, though not " compensation" cannot be left out of account. It is estimated that the cost attributable for the National Health Service and the personal social services (e.g.under the Chronically Sick and Disabled Persons Act 1970) to accidental death, injury and industrial disease is pounds 575 m per annum and employers' medical services add a further pounds 50m to this"

32. In the book entitled " Dias Jurisprudence" by R W M Dias, Fifth Edition at page 203 it has been observed as under:

" The law of torts furnishes many illustrations of the influence of social and individual values. In the earliest times the principle was one of strict responsibility, that is, a prima facie case did not require actual proof of fault. This arose out of the need to suppress private vengeance and self-help, which were incompatible with any kind of social order. The nascent authority was not strong enough to stamp them out and the most it could do was to regulate their exercise. In this way state-regulation of self-help came to be the beginning of litigation. Vengeance was regulated in due proportion to the injury; an eye for an eye(only one eye, not two). In order to appease victims of wrongdoing and to encourage them not to resort to blood-feuds and the like, early law adopted their point of view.The emphasis was on the deed, not the character of the doing; if the defendant was shown to have caused the harm, fault was presumed and rebutting defences were allowed only sparingly. It is therefore arguable that this strict principle in favour of plaintiffs was the product of the need to preserve social stability. In the course of time state power became established and changing ideas insisted more on moral fault as the basis of responsibility. The emphasis then shifted away from the plaintiff's to the defendant's point of view, from presumption of fault to actual proof of fault, and the principle took root that there was not to be even a prima facie case without this. In more recent times, however, the pendulum has swung back towards the reintroduction of the strict principle in the social interest. The need today is to accommodate both the plaintiff's and the defendant's point of view, which is leading towards automatic insurance.

As the law stands, the existence of a duty-situation, whether of fault or strict responsibility, is determined by the balance between the many complex and conflicting interest that make up modern society. Until the 1970s the question whether the law, on grounds of policy, saw fit to give a remedy depended on the kind of harm complained of, the manner of its infliction and with reference to the categories of person to which the plaintiff and defendant respectively belonged. Thus, any decision to extend or not to extend the ambit of duty situation was not based on law, but on a value judgment. The position now is that whenever harm is foreseeable to another, there will prima facie be liability unless policy considerations dictate otherwise."

33. It will be profitable to refer to some of the passages from the book entitled "Law Relating to Contributory Negligence", First Edition, by Dr. Gurbax Singh Karkara at pages 9, 10 and 12 to 18:

"9. DEVELOPMENT OF THE COMMON LAW DOCTRINE OF CONTRIBUTORY NEGLIGENCE AND ITS APPLICABILITY TO INDIA

34. The distinction between tort and crime belongs to comparatively mature age of civilization and social order. The English had applied the common law rule of plaintiff's contributory negligence in India upon the basis of justice, equity and good conscience as there has been no specific provisions when they came to India. The Courts established by them were required to decide the cases, in the absence of any law, according to justice, equity and good conscience. The expression `justice, equity and good conscience' has been interpreted to mean the rules of English law if found applicable to Indian society and circumstances.

35. By the Charter of 1726, both common law and statute law of England, were introduced as they stood in 1726. During British Rule, the Courts in India were required to apply the law as enacted by

British Parliament and the Indian Legislation and were also required to act according to justice, equity and good conscience. The earliest enactments of Parliament of U.K. were of 1781 and 1797 which provide that in the absence of any enacted law applicable to the circumstances, the case was to be decided according to justice, equity and good conscience.

36. In case of torts, the courts tried to follow the rules of common law in so far as they were in consonance with justice, equity and good conscience. They departed from it when any of its rules were unreasonable and unsuitable to Indian conditions. The application of English law in India as rules of justice, equity and good conscience has, therefore, been a selective application.

37. Sir Fredrick Pollock prepared a draft Code of Torts for India known as `The Indian Civil Wrongs Bill' at the instance of the Government of India.

38. But it was not taken up for legislation. In this draft the law relating to contributory negligence was not dealt with.

To discuss the development of the doctrine during the modern period following scheme of discussion has been adopted in this part:

(i) The English rule of contributory negligence.

(ii) Applicability of the doctrine of contributory negligence in India.

(iii) Development of the rule of last opportunity by the common law.

(iv) Applicability of the last opportunity rule in India.

The English Rule of Contributory negligence

39. The development of the doctrine of contributory negligence could profitably be traced from the case of Butterfield vs. Forester. The facts of the case were:

In the course of repairing his house the defendant obstructed the street by placing a pole across it. The plaintiff riding home at dusk when there was sufficient light to notice the obstruction, but galloping at high speed came into collision with the pole, and was injured. It was held that he had no cause of action. Notwithstanding the defendant's negligence, the plaintiff might have avoided the accident by the use of due care. If he had used ordinary care, he must have seen the obstruction; so that the accident appeared to happen entirely from his own fault.

40. Thus, the Courts had evolved the rule that if there was some negligence on the part of the plaintiff he was debarred from getting damages. To make one of the parties to pay the while liability in spite of other's contribution, was a manifestation of the social policy of individualism which prevailed in England during the commencement of nineteenth century. The policy in effect gave expression to the view that nobody is expected to take more care of another than the latter is

expected to do about his own safety.....

41. According to a theory derived from John Stuart Mill and known as theory of equivalence of conditions, in all cases where it is impossible to fix on a single act as a cause of action of an event and the event is the result of a group of conditions each of which is a necessary antecedent, both parties have combined to cause the damage and both should pay for it.

42. Applicability of the Doctrine of Contributory Negligence in India.

43. The Indian Courts use to apply the defence of contributory negligence, that a plaintiff who is partly to blame for the wrong claimed to have been caused by the defendant cannot recover any damages.....

44. The first reported case in which the English common law doctrine of contributory negligence refusing to give any relief due to contributory negligence of the plaintiff was decided in 1909. In this case,

45. A railway company contracts to carry passengers inside the railway carrier. A person travelling outside the carrier and putting his legs outside the carrier was injured. The contributory negligence of the passengers was held to be a good defence to an action for damages.

This rule was later applied by the Courts in India while deciding the cases having an element of contributory negligence.....

46. The Courts in India have applied English law as being in consonance with the rules of justice, equity and good conscience, except in special cases where the English law has been considered by the judges to be unreasonable and unsuitable to local conditions.

Development of the Rule of Last Opportunity by the Common Law Courts.

47. The Common law principle laid down in Butterfield vs. Forestar, was that if the plaintiff was also negligent, he could not recover damages if his own negligence was a cause of the accident. Thus the defendant was held to be a tort-feasor, the plaintiff's contribution to the tort wholly absolved him from damages. A rigid application of this rule obviously resulted in harsh and inequitable treatment of those whose contribution to the wrong was less but whose loss in suffering was great. This stalemate rule worked hardship where one of the two negligent parties had sustained the whole of the loss although his negligence was not a major cause of the accident.

48. The common law courts, therefore, introduced the rule of ` last opportunity' which enabled a plaintiff to recover notwithstanding his negligence; if it is found that the defendant had the last opportunity to avoid the accident. In United States, it is known as the doctrine of `last clear chance' and in Canada as the doctrine of` ultimate negligence'. It enabled the plaintiff to recover notwithstanding his own negligence, if upon the occasion of the accident the defendant could have avoided the accident while the plaintiff could not.

49. It was laid down in Davies v. Mann, that the contributory negligence of the plaintiff is no defence if the defendant had a later opportunity than the plaintiff of avoiding the accident with reasonable care.

This rule was approved by the House of Lords in Radley vs. Lodon and N.W. Rlay.

50. This rule of last opportunity was extended to constructive last opportunity in British Columbia Electric Rly. Co. v. Loach where it is modified to mean that if the plaintiff and the defendant were both in default, the determining question is, without whose negligence the mischief might have not happened?.....

Really in ultimata analysis the enquiry is who caused the accident?.....

Applicability of the Last Opportunity Rule in India

51. The common law doctrine of contributory negligence as laid down in Butterfield vs. Forrester was followed in India on the basis of justice, equity and good conscience, produced hardship when one of the two negligent parties suffered the greater loss although his negligence was not the major cause of accident.

52. In Chhote Lal v. G.I.P. Rly Co. the rule of last opportunity developed by the common law courts was recognized as applicable.

Later on Calcutta High Court also recognized the applicability of the rule.

53. The rule of last opportunity obviously failed to give an equitable treatment to the parties, because it was based on an illogical postulate that in every case the person whose negligence came last in time was solely responsible for the damages. It took no account of the partial contribution to the unfortunate accident by the other party. So the common law courts had already modified it to mean ` constructive last opportunity' in the historical case of British Columbia Rly Co. v. Loach. The decision was followed by the Courts in India. Thus, in Suman v. The General Manager, M.P.S.R.T.C. and another, this new rule of constructive last opportunity was followed.....

54. In a case of contributory negligence the crucial question on which the liability depends is whether either party could by the exercise of reasonable care have avoided the consequences of other's negligence; if he could then that party is legally responsible for the accident. Similar view was taken in Ramesh Chander Dutt v. Union of India.....

55. The principles bearing on the law of contributory negligence are not properly understood in this country. A defence based on contributory negligence, proceeds on the assumption that the person raising the defence was himself negligent and that negligence would not afford a cause of action to the plaintiff either because of its remoteness to the accident or because the plaintiff who had the last opportunity to avoid the accident did not do so, or that he did not act with the reasonable care and prudence and that this negligence of the claim was the direct cause of the accident, but for which the

accident would not have taken place."

56. In Chapter IX the author has also referred to LEGISLATION BASED ON THE PRINCIPLE OF NO FAULT LIABILITY in sub-para (4) which reads as under:

" Inspite of the tremendous value of the rule of negligence in the regulation of affairs in a democratic society, its application in motor vehicle accidents has not been satisfactory in the changing concept of the society. The Court renders its verdict after listening to witnesses testifying in minute detail to facts which existed for only a split second of time. Such testimony is obviously, except in small minority of cases, the result of what witnesses, upon reflection, assumes must have happened, and this may be the result of conversation with others and coaching by his solicitor during preparation of the case. This unreliability in brining an issue to trial has been the reason that the liability according to fault should be discarded.

As the human factor plays its own role, accidents resulting in injuries and damage to property are normal and indigenous to the presence of motor vehicles on the highways. Every motorist is at some time, guilty of inadvertence or mistaken judgment and it is only a matter of chance that such inadvertence might occur at a time when some other person is made to or likely to suffer as a result of it. The new policy is that the losses resulting from such accidents should be the collective responsibility of the motoring public and borne as a cost of operation.

A new development has taken place in the interpretation of Motor Vehicles Act. The Courts are anxious to fix liability under its provisions even if there is no fault."

57. It will be also relevant to refer to the following passage under the caption" JUDICIAL IMPERSONALITY' the book entitled " Dias Jurisprudence", Fifth Edition at pages 221, 222 and 223:

" Some exercise of discretion be it large or small is unavoidable in the very nature of the judicial process. The point that needs to be stressed now is that there is a difference between allowing this discretion to be guided by ones personal likes and dislikes and by one's sense of current values assessed as objectively as possible. Mr. Justice Frankfurter said:

`It is not the duty of judges to express their personal attitudes on such issues deep as their individual convictions may be. The opposite is the truth: it is their duty not to act on merely personal views.' Subjectivity, however, cannot be excluded altogether, since the pattern of values is what the individual thinks it is. Hence the need to stress ` as objectively as possible'. Both these points were appreciated by Slesseer LJ:

'Yet even here it is suggested, the Judge should apply not his own private opinion but an objective test. The customary prevailing moral habits and assumption of the good citizen should be his criterion, not his own personal preference, to quote Dr. Wurzel of Vienna in his famous Judicial Thinking. If all interpretation were nothing but a sort of artistic function, then nobody could ever foresee how any law would be understood or what effect it would have. Nevertheless, in matters such, for example, as protection of liberty, the views of the Judge on the respective rights of the

citizen and state can hardly be excluded, more particularly where society, as a whole, entertains divided opinions. In this case, where the Judge cannot obtain a consensus, what standard has he except his own opinion.

58. The thrust of the attack on judicial values is not so much that judges are consciously prejudiced, but that they are subconsciously influenced by the fact that they come from a narrow social stratum and reflect the values of a minority class. There can be no question but that subconscious influences of this kind do exist, but the submission made here is that the charge is prone to exaggeration.

59. In the first place, if subconscious influences are taken into account, as indeed they should be, then account should be taken of all such influences, including those that tend to counteract and minimize prejudice. One of these is fidelity to rules, principles and doctrines. Even if a judge were to have some prejudice and wants to give effect to it, he has to do so as plausibly as possible within the framework of rules, the leeways of doing so are not unlimited and this does operate as a brake on personal prejudice. It has to bee remembered that cases are argued, often with great ingenuity, by counsel, and if one side puts forward an interpretation of a statutory provision or a precedent, which cannot be countered plausibly, the judge has to decide accordingly, however much his own wishes are to the contrary. Then there is ' role pressure', i.e. the pressure exerted by the judicial office with its tradition of impartiality. The conditioning influence of roles has been examined by sociologists and will be discussed later. The more ancient the office and its tradition, the stronger the pressure. Most important of all, perhaps, is the training at the Bar, which is unique in de-personalised thinking. Judges are recruited from the leaders of the profession, and these are people who have learned over many years how to throw the whole of their expertise, intelligence and personalities into the cause of their clients, regardless of their own sympathies and preferences, arguing with equal force whether they sympathize with their clients or not. The effect of such a training over the greater part of a working life is indelible. It is because of such factors as these that inquiries into the psychology, upbringing, health, wealth etc.. of individual judges are unlikely to be helpful. The movement known as American realism was originally keen to emphasize the significance of the personal element, but this aspect of the movement has virtually disappeared with the appreciation of other factors that neutralize or minimize it.

60. Subconscious influences are also countered by conscious appreciation of the danger of such influences, and such appreciation lies at the root of responsible action in general. British judges have long been aware of the possible influences of class and background, so the following remark of Scrutton LJ is less weighty in favour of critics of the judiciary than they suppose, for it could cut both ways:

`Labour says: " Where are your impartial Judges?. They all move in the same circle as the employers. How can a labour man or a trade union get impartial justice?" It is very difficult sometimes to be sure that you have put yourself into a thoroughly impartial position between two disputants, one of your own class and one not of your class."

61. The learned Lord Justice is here saying that the task is difficult, not that it is impossible; and consciousness of the danger is itself a safeguard. Judges sometimes bend over backwards to avoid it.

Thus, in Ex p Church of Scientology the Church succeeded in getting their appeal heard by a panel of the Court of Appeal not presided over by Lord Denning MR, who had heard eight cases concerning the Church in the previous ten years and who, it was alleged, had ` an unconscious adverse influence.' Shaw LJ said that the grounds of the application were not merely slight, but non-existent, yet in order to avoid even the possibility or appearance of influence he acceded to the request.

62. The debate on judicial impersonality is typical of persuasive argumentation, which was mentioned at the beginning of this book. People tend to approach this issue with convictions already formed one way or the other, which makes arguments favourable to one's prejudice more persuasive than contrary arguments. As pointed out earlier, appeals for evidence in this kind of situation are either misplaced, or else such evidence as there is carries greater or less weight according to whether or not it supports the conclusion one likes. Evidence of judicial prejudice comes mainly though not exclusively, from the area of industrial law and here the allegation is often made that judges are prejudiced against trade unions. A preliminary point that needs to be made is that reported cases do not reveal the whole picture because not all decided cases are reported. Court records show that many pro-union decisions are seldom reported, and, even when they are, evoke no public protest. Only anti-union decisions tend to receive publicity and spark off criticism of judicial prejudice. Since praise of pro-unions decisions is either lacking, or so muted as to pass unheard, this makes the allegation of prejudice no more than a political attack."

63. With this background and as expected by Dr. Gurbax Singh Karkara, his some of the suggestions about no fault liability came to be accepted and implemented by introducing Section 95(2) in the Act of 1939. However, it appears that despite introduction of Section 95(2), the time proved that it still falls short to reach the purpose and discharge the social obligation of the State, of being helpful to the victims more particularly, in the case of Motor Accidents which occur more and more with increase in population. Increase in number of vehicles, inadequate development of roads, and lack of care for the roads. In this state of fact situation, legislature thought it fit to introduce to discharge its social obligation by adding Section 163-A in the Act. If we refer to two of the provisions, namely Section 140 and 163-A, of the Act, they relate to no fault liability. So far as Section 140 of the Act, is concerned, it is no fault liability, is clear from the title of the Section while it can be culled out from Section 163-A of the Act that it also refers to no fault liability though the title is a special provision as to Payment of Compensation on Structured Formula Basis. Section 163-B of the Act specifically provides that the person entitled to claim under 163A and 140 of the Act,has to claim under either of the Sections and cannot claim under both. Award under Section 140 of the Act is now a fixed sum of Rs. 50,000/- in respect of death of any person and in respect of permanent disablement as defined in Section 142 of the Act, it is fixed at Rs. 25,000/-. Compensation under Section 163-A is as per structure formula, but it as appears from the structure provided in Second Schedule, is for limited heads. In case of motor accidents damages can be claimed for the following heads. Pecuniary loss, for proved losses or expenses; future loss when life is shortened; loss of earning; restriction on future earning capacity; loss of chance of favourable employment or prospects; loss of career; unused earning capacity; medical and hospital expenses; nursing at home and constant attendance; cost of managing disabled persons; extra nourishment; loss of expenses incurred by relative and other third parties; breakdown of marriage; loss or damage to property etc. On the head of damages for personal loss compensation can be claimed for disablement, pain, loss of enjoyment of life, loss

of impairment of bodily integrity, pain and suffering, nervous shock and loss of the pleasure of amenities of life, shortening of life, disfigurement, discomfort and inconvenience, disease or illness. These heads are all illustrative and not exhaustive. To be entitled to claim under any of the heads, claimant has first to prove, negligence of the driver of other vehicle. In almost all cases, claimants would not be at the scene of accidents. They only receive the message/news of accident which generally would be the news of their misfortune. In majority of cases, breadwinners are involved . Now in these days of materialist world, more particularly, when regard for truth is eroding unflinchingly and standards of moral value falling to their nadir persons through whom the negligence can be proved, are of little assistance. It is for the claimants to unearth the truth by indirect method of proofs under the law and that method in view of the falling standards of ethics everywhere throws the claimants to frustration and disgust against the profession. Fact remains that claimant has lost his kith and kin, in accident, and the name of accident comes to them like a bolt from the blue.

64. Legislature in the above backdrop has in our opinion added Section 163-A with effect from 14th November, 1994 in Chapter XI of the Act. Chapter XI refers to insurance of motor vehicles against third party risk. Section 146 of the Act provides that no person shall use, except as a passenger, or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter. In the case of a vehicle carrying, or meant to carry dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991. Section 140 of the Act is in Chapter X under the head of liability without fault in certain cases. The Supreme Court in the case of Minu B. Mehta and another vs. Balkrishna Ramchandra Nayan and another (1977 ACJ 118) has reiterated the original principle of tort and liability arising therefrom and redress to the lost saviour. There the Supreme Court has said that the liability of the owner of the car to compensate the victim in a car accident due to the negligent driving of his servant is based on the law of tort. Regarding the negligence of the servant the owner is made liable on the basis of vicarious liability. Before the master could be made liable, it is necessary to prove that the servant was acting during the course of his employment and that he was negligent. The number of vehicles on the road increased phenomally leading to increase in road accidents equally. To remedy the defect various steps were taken and the Road Traffic Act,1930, the Third parties (Rights against Insurers) Act, 1930 and the Road Traffic Act, 1934 came to be enacted in England. Then a system of compulsory insurance was introduced enacting the Road Traffic Act, 1930. Its object was to reduce the number of cases where judgment for personal injuries obtained against a motorist was not met owing to the lack of means of the defendant in the running-down action and his failure to insure against such a liability. Despite this assurance through legislation of compulsory insurance the proof of negligence remains a lynch pin to recover compensation. The Supreme Court in Mini Mehta's case has observed that the concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in public place cannot justify fastening liability on the owner. As we have referred earlier and as has been held in number of cases by the Supreme Court as well as other High Courts the claimants have to prove negligence before they can recover compensation and that has caused the greatest hurdle in their way to recover the same.

65. The purpose of introduction of provisions of Section 110 of the Motor Vehicles Act, 1939 and Section 140, 163, 163-A, 166 in the Act and taking out the cases of compensation arising out of the use of motor vehicle from the jurisdiction of the CivilCourt is to alleviate the hardship and not to augment the same. The intent of the legislature is to reduce the suffering, if the same cannot be done away, at least by way of providing them with the compensation at the earliest without causing any hardship. Whenever a claim is filed by the claimants for compensation for damage caused by the use of motor vehicle, claimants were required to first prove the negligence of the other side under the common law before the Civil Court or the Tribunals established under the law. However, they were relieved from such proof of negligence for the claims that may be covered under Secs. 140 and 163 of the Act. There the fight was between the mighty and the poor. The claimants more particularly the heirs of the victims of fatal accidents had to oppose mighty Insurance Company.

66. So far as the funds to defend their cases are concerned, Insurance Company would never feel paucity of funds. They raise defences all and sundry and at times their goal is to see that the claim of the claimant, if not defeated at least delayed. With this purpose and motive they contest the claims under the Motor Vehicles Act. We have not come across any case where on receipt of the notice by the claimant/s for the claim or on service of the summons from the Claims Tribunal the Insurance Company, more particularly, in cases where insurance of the vehicle is not disputed, offering or making payment atleast of the amount which according to them the claimants would be entitled to. We have yet to come across such gesture. The only purpose with which the Insurance Company defends the claim petition is to see as to how the case of the claimant is defeated and on their failure to do so, how the claim of the claimant would be reduced to a minimum and/or delayed. The law of tort was required to be humanistically overhauled and which is now by passage of time in the light of the judgments of the Apex Court and different High Courts referred hereinabove liability fastened by a traditional common law concept is now tried to be fastened with legislative enactment. It can be said that a thought is now a legislation. Keeping in mind this state of affairs, in cases of victims of the motor vehicles, legislature initially added Section 140 in the Act.:

"140. Liability to pay compensation in certain cases on the principle of no fault,-(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of much death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty five thousand rupees.

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163-A."

67. Initially amount provided in this section was Rs. 7500/- and Rs. 1500/0, which was amended and increased to Rs. 25,000 and to Rs. 12,000/-which is amended further and raised to Rs. 50,000/- and Rs. 25,000/-. The amount is raised by the legislature keeping in mind the falling value of a rupee. This payment is for a limited purpose only. It is by way of, as it appears, an interim instant relief. For the remaining claim amount, however, huge or large it be, claimants were required to face that procedural music of hardship to prove negligence against the mighty Insurance Company. It appears that in view of the judgement of this Court in the case of MUNSHIRAM D. ANAND VS. PRAVINSINH PRABHATSINH (1996(1) G.L.H. 513 a claimant is entitled to file an application under Section 140 irrespective of Section 166. However, there is no statutory bar for the claimant to file application under Section 140 irrespective of Section 166. In our opinion, it is unfortunate for the claimants that if a claim under Section 166 of the Act is made claimant/s has/have to prove negligence of the other side and while proving the same all the defence u/Sec. 149 of the Act or u/Sec. 170 if permission is sought in writing and granted by speaking order are open for the Insurance Company and owners of the vehicle either to prove and show no negligence on their part or there is a contributory negligence of the victim or its vehicle. Even by addition of Section 140, the legislature again could not achieve the goal to alleviate the hardship. The legislature was therefore required to add Section 163-A in the Act. It will be relevant to refer to statement of objects and reasons whereby Section 163-A was introduced by the Parliament. It will be relevant to refer to the factors which were taken into consideration by the Parliament and they are in paragraph (2) of the Statement of Objects and Reasons which reads as under:

STATEMENT OF OBJECTS AND REASONS "2. After the coming into operation of the Bill or Committee, Government received a number of representations and suggestions from the State Governments, transport operators and members of public regarding the inconvenience faced by them because of the operation of some of the provisions of the 1988 Act. A review Committee was therefore constitute by the Government in March 1990 to examine and review the 1988 Act.

68. The recommendations of the Review Committee are in paragraph (3). The relevant part whereof reads as under:

" The recommendation of the Review Committee were forwarded to the State Governments for comments and they generally agree with these recommendations. The Government also considered a large number of representations received, after finalization of the Report of the Review Committee, from the transport operators and public for making amendments in the Act. The draft of the proposals based on the recommendation of the Review Committee and representations from the public were placed before the Transport Development Council for seeking their view in the matter. The important suggestions made by the Transport Development Council relate to, or are on account of:-

(b) providing adequate compensation to victims of road accidents without going into longdrawn procedure;"

69. Based on this, proposed bill was prepared and that bill provided for increase in the amount of compensation to the victims of hit and run cases, removal of time limit for filing of application by road accident victims for compensation and a new predetermined formula for payment of compensation to road accident victims on the basis of age/income which is more liberal and rational. A further amendmeent was also sought about the jurisdiction of the Tribunal and it was sought that the Claims Tribunal within the local limits of whose jurisdiction, the claimant resides or carries business may also have jurisdiction to entertain the claim application. It will be relevant to refer to the notes on the relevant clauses whereby Section 163-A was proposed to be introduced and the consequences which it may carry on the award that may be made under Section 140 of the Act. Clause 43 refers to necessary amend in Section 140 of the Act on introduction of Section 163-A and Clause 51 refers to insertion of Section 163-A. Clauses 43 and 51 reads as under:

" Clause 43 seeks to amend section 140 so as to increase the amount of compensation from twenty-five thousand rupees to fifty thousand in the case of death and from twelve thousand rupees to twenty-five thousand rupees in case of permanent disability. It also provides that the compensation under this section shall be in addition to what the owner of the vehicle is liable to pay as compensation for relief under any other law. However, the amount payable under section 140 or the proposed section 163-A shall be reduced by the amount of compensation for relief given by the owner under the said other law."

" Clause 51 seeks to insert new section 163-A to provide for payment of compensation in motor accident cases on a predetermined formula given in the Second Schedule. The Central Government has been empowered to amend the Second Schedule as and when considered necessary."

70. On reading Clause 51 and particularly proposed legislation pertaining to predetermined formula, it will be necessary to bear in mind the meaning of the word " pre determined" Dictionary meaning of the word "predetermined " is to decided in advance, or decree before hand and apt use of that word " predetermined is also shown in the dictionary by framing a sentence which we think it proper to quote " Did an unhappy childhood predetermine him to behave as he did?. This word used by the legislature in the Bill in our opinion reflects the intention and their experience of the past of the behaviour of the Insurance Company and the owners of the motor vehicles. With this background we will now refer to Section 163-A of the Act which reads as under:

"163-A. Special provisions as to payment of compensation on structured formula basis) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.-For the purposes of this subsection, " permanent disability " shall have the same meaning and extent as in the Workmens' Compensation Act, 1923(8 of 1923).

(2) In any claim for compensation under subsection (1), the claimant shall not bee required to plead or establish that the death or permanent disablement in respect of which the claim has been mad was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the official Gazette, from time to time amend the Second Schedule."

71. The question raised by the learned Advocate for the Insurance Company is that whey and when particularly there is no prohibition in the section they be prevented from proving negligence of the victim. To answer this, it is relevant to reefer to subsection (2) of Section 163-A of the Act again:

"(2) In any claim for compensation under subsection (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person."

72. In an application under Section 163-A, subsection (2) in our opinion provides for rules of pleading. Under subsection (2) claimant is not required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. This rule of pleading in our opinion is couched in negative form. Normally, in the rules of pleading the claimants are directed to state certain facts by way of their pleading whereby they are put to guard to show and suggest what they are required to prove. On making such statement and averment in the pleading even other side also comes to be informed as to what they are required to disprove. If we read subsection (2) of Section 163-A again it is specifically stated there that claimants are not required to plead or establish wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. This suggests that the legislature has a specific intention to bring out the case or a right which is claimed under Section 163-A from an ordinary rule of pleading in claim applications where the right is claimed or has arisen under Law of Torts and/or common law. As we have discussed earlier it is the duty of the claimant as held in Minu B. Mehta's case that negligence is the lynch pin to recover compensation. The whole law of Law of Torts has begun as it can be said from the case of Rylands vs. Fletcher with strict liability and there it was imposed on the claimant to prove negligence of the other side to succeed in his claim for

compensation. But by passage of time, as we have discussed earlier burden of proof appears to have been either removed or made little liberal. Despite this experience has shown to the legislature that it has only been abused than used by the Insurance Company having only materialist and less than human approach. Therefore, for certain heads the burden of proof of negligence has been dispensed with.

73. The question is whether Section 163-A has an independent existence than that of Section 166 of the Act. Section 166 of the Act has provided a procedural form for a claim for compensation arising out of use of motor vehicle. A right which was originally and ordinary there of a claimant to go to the Civil Court has been now diverted to a special forum i.e. Tribunal constituted under Motor vehicles Act. Tribunals are constituted under Section 165 of the Act and those very Tribunals are given power to entertain and decide the application under Section 163-A of the Act. In the Bill the Transport Development Counsel suggested at the time of introduction of the Bill to provide adequate compensation to victims of road accidents. Learned Advocate Mr. B.S. Patel has tried to explain what is the meaning of the word `adequate' in context with the word `just' compensation used in Section 168. According to the new Webster Dictionary the word ' adequate' is defined as ' sufficient' in relation to the present provisions of the Act and the word `adequate' is required to be considered as ' necessity' for the time being. On the other hand meaning of just clearly reveals as per the same dictionary what is according to the right of the person and under Law of Tort right to compensation is decided in view of damages caused to him because of the negligence of the other side or the tort feasor. Having in mind this requirement of the claimant the legislature has provided for compensation under Section 163-A of the Act as indicated in the Schedule and that Schedule appears to have been prepared on the basis of experience and decided cases by the Apex Court and different High Courts. Application filed under Section 166 of the Act, though it is named as a Claim Petition our experience and the experience of all concerned has shown that the same is treated like a suit and it has been dealt with and has been suffering from the same vice of Civil Suits. If the claim application is filed under Section 166, notice is required to be served on the respondents, they appear, file their written statements where diverse contentions are raised, wherein the only view and purpose is as stated by us hereinbefore and also meets with number of adjournments and has been delayed enormously before conclusion is reached by the Tribunal. To avoid the same if an application is filed under Section 163-A, what is required to be stated by the claimant/s is (i) the age of the victim (ii) fact of accident by the use of motor vehicle (iii) it is fatal or of injury causing permanent or partial disability (iv) the income of the victim, (v) name of the owner of the vehicle with its number, if any and the name of the authorised insurer. On such data being furnished by the claimant notice is issued to the owner and the authorised insurer. In view of subsection (2) claimant is not required to allege much less prove wrongful act or neglect or default of the owner of the vehicles concerned or any other person. The Tribunal after service, on taking into consideration the contention raised by the Insurance Company or the owner as to the income and multiplier may award as per schedule keeping in mind the age and income. It will be relevant to state that claim under Section 163-A of the Act covers only two heads, namely, pecuniary damage and general damage. General damage, in cases of fatal as well as non fatal, some limits are prescribed. In case where the income is not known or the victim is a non earning person, then also what would be the pecuniary loss and what amount may be awarded towards general damages is also answered in the schedule. The amount only under the heads stated in the schedule, can be awarded. We have in the

earlier part of this judgment referred to number of heads under which damages can be claimed. Despite innumerable heads of damages and presumably within the knowledge of the legislature they have provided some specific heads only for the claim under Section 163-A. It is not that the claimants claim for the remaining heads is barred or claimant is debarred from making the claim but then he can claim for the same by way of a claim application under Section 166 of the Act.

74. Now it appears that an anomaly may arise. Question is how and if so how to resolve it. A claim is made for certain heads available under Section 163A and an award is made accordingly. Claim for the remaining heads if made under Sec. 166 of the Act otherside may raise a defence either of no negligence on their part or contributory negligence. It may happen that Tribunal may accept the defence and an award may be passed. Thus, for a claim arising out of motor accident on certain heads there is no negligence and for certain heads there is a negligence. This anomaly stands resolved by reading provisions of Section 163B and sub-sections (4) and (5) of Section 140 which reads as under:

"Sec. 163-B. Option to file claim in certain cases.- Where a person is entitled to claim compensation under Section 140 and Section 163-A, he shall file the claim under either of the said sections and not under both.

"Section 140 sub-sec.(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement."

75. "Section 140 sub-sec.[(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under Section 163-A]

76. Under Sec. 163B, an option is given to claimant to claim either under Sec. 140 or 163A of the Act. Compensation provided under Sec. 140 of the Act is to a limited extent which is a relief either pending or not claimed under Sec. 166 of the Act. Claim under Sec. 163A is final claim for certain heads only. Claim under Section 163A appears to be an enlarged form of claim under Sec. 140, but is limited and for certain heads. For the compensation for remaining heads, claimant may file claim application under Sec. 166. Thus, it can be said that claim under Sec. 163A is also limited for certain heads and is not to be adjusted against other heads for which the claim is required to be established like an ordinary claim.

77. In our opinion, there is no anomaly. So far as the claim under Section 163-A is concerned, it is for two heads, one is pecuniary loss and the other general damages upto a certain ceiling. Ceiling appears to have been arrived by the legislature on a common experience as to the cost of living in the

society. If the claimant feels entitled to more than that he may go for a claim under Section 166 of the Act.

78. We may revert back to a question as to whether Insurance Company or the owner has a right to raise defence of negligence or wrongful act or the default of the victim or its vehicle and proved the same. It was contended by the learned Advocate Mr. Mehta that there is no prohibition in subsection (2) of Section 163-A from proving the wrongful act or neglect or default of the victim or its vehicles by the Insurance Company or the owner of the vehicle. According to him what is required under subsection (2) of Section 163-A is that a claimant is not required to plead or establish wrongful act or neglect or default of the owner of the vehicles concerned or any other person. There is no prohibition in subsection (2) of Section 163-A on the Insurance Company or the owner or any other person to prove the negligence or wrongful act or the default of the victim. If the legislature has an intention to keep alive this right of the Insurance Company or the owner or any other person open or if such a right in absence of express prohibition on their part is required to be read in or culled out,the whole purpose and intention of subsection (2) and in particular introduction of whole of Section 163-A by the legislature may stand frustrated. If this right is to be recognized as implied or to be read on construction of the said provisiomn contended by Mr. Mehta, then we do not think that there would remain any difference between Section 163-A of the Act and Section 166 of the Act. The only difference which will remain is that under Section 163-A damages would be claimed for only few specified heads while under Sec. 166 of the Act damages on all the heads can be claimed. Here comes the question when conflict arises how subsection (2) in view of the arguments advanced by the learned Advocate Mr. Mehta can be interpreted.

79. To answer this, it will be relevant again to refer to mark the difference between Section 163-A and Section 166 of the Act. On reading subsection (2) of Section 163-A, it is clear that claim under Section 163-A is based on no fault liability while claim under Section 166 is on a fault liability. Section 163-A does not call for any longdrawn trial which is inherent in Section 166. In Section 163-A only pecuniary and general damages are awarded while under Section 166 special damages can also be claimed. Under Section 163-A income at the time of accident is taken into consideration while for arriving at the datum figure under Section 166 not only the income at the time of accident but future prospects also certain to take shape may be taken into consideration as a longdrawn trial takes place. While deciding Section 166 application, it is the Tribunal who has to adjudicate and come to the conclusion as to which multiplier will be applicable while in an application under Section 163-A multiplier is fixed on the basis of age group as stated in schedule, a part of Section. In an application under Section 163-A age of the victim is relevant to arrive at the number of multiplier while in Section 166 application there are number of factors which the Tribunal has to take into consideration, for example, who are the dependants either heirs, or parents and their age. Age of heirs and parents is not taken into consideration while deciding the multiplier under Section 163-A while age of heirs and age of parents, if dependents, has to be considered in deciding the multiplier in application under Sec. 166 of the Act. For damage to property arising out of motor vehicle there is no such right under Section 163-A but the same is available under Section 166. If income of the claimant is not known then Section 163-A provides for a minimum income while in claim under Sec. 166 of the Act the Tribunal is required to adjudicate and decide the minimum income may be on presumptions. Section 163-A has specifically provided for loss to the estate no doubt to a limited

extent without proof under Sec. 163-A while the same cannot be awarded without proof under Section 166 of the Act. On furnishing a data as to age of the victim; income of the victim; schedule provides as a statutory guide and illustration to calculate the award amount while it is not so available for claims under Section 166. We say that schedule is a guide in view of the judgment in the case of U.P.State Road Transport Corporation vs. Trilokchandra and Others (Supra). We also however, say that the same is illustrative for the reasons which we may state hereinafter.

80. From the above differences in Section 163-A and 166 of the M.V. Act, the intention of the legislature becomes clear. Provision for compensation is a benevolent object of the legislature. To achieve that benevolent object, which had number of hurdles to be crossed the legislature has introduced Sec. 163-A in the Act. The fact remains that by the use of motor vehicle when the accident takes place the victim is either injured or may be fatal. If a bread winner of the family is taken away or if he is made crippled the family or the dependent are required to be continued to be maintained from the next day and thereafter. If the accident is fatal one and the bread winner in the family is the victim how the members of the family/dependents will get their bread. Does a solace satisfy the hunger or need of the person? Making necessary provision in the legislation like Section 166 has proved to be solace only as longdrawn litigation takes place. To avoid the same and to provide instant and immediate relief as it appears from the statement of objects and reasons and the report of the Committee, Section 163-A is introduced by the legislature to provide for immediate relief regardless of fault. This deviation from the common law is only with a view to adopt or reach the human need of the society. If we read that the owner of the vehicle or the Insurance Company is entitled to defend the claim by advancing proof of wrongful act or neglect or default of the owner as it is not specifically prohibited in subsection (2), then again, we are falling in the trap which the legislature has tried to avoid or get rid of there of Section 166 of the Act. Introduction of no fault is as a part of social justice. For the purpose of achieving social justice legislature has departed from usual common law. An additional benevolent provision is added in a beneficial legislation for award of compensation. While considering provisions of Section 92A and 110A of 1939 Act in case of Shivaji Dayanu Patil and another vs. Smt. Vatshala Uttam More,(1991 ACJ p.777) = (AIR 1991 SC 1769), the Supreme Court has observed in paragraph (5) as under:

"5. Before we proceed to deal with the aforesaid submissions of Shri Sanghi, it would be relevant to mention that S. 92A of the Act forms part of Chapter VII-A which was introduced in the Act by Motor Vehicles(Amendment) Act,1982(Act 47 of 1982). The said Chapter bears the heading "LIABILITY WITHOUT FAULT IN CERTAIN CASES" AND CONTAINS Ss.92A to 92E. The purpose underlying the enactment of these provisions as indicating in the Statement of Objects and Reasons appended to the Bill, was as follows:

" There has been a rapid development of road transport during the past few years and large increase in the number of motor vehicles on the road. The incidents of road accidents by motor vehicles has reached serious proportions. During the last three years, the number of road accidents per year on the average has been around 1.45 lakhs and of these the number of fatal accidents has been around 20,000 per year. The victims of these accidents are generally pedestrians belonging to the less affluent sections of society. The provisions of the Act as to compensation in respect of accidents can be availed of only in cases of accidents which can be availed of only in cases of accidents which can

be proved to have taken place as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles concerned. Having regard to the nature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as " hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown..."

81. The Court has also observed in paragraphs (10) and (11) as under:

"10. In Gujarat State Road Transport Corporation vs. Ramanbhai Prabhatbhai,(1987) 3 SCR 404: AIR 1987 SC 1690), reference has been made to the background in which Chapter VIIA was introduced in the Act and it has been observed:

"When the Fatal Accidents Act,1855 was enacted there were no motor vehicles on the roads in India. Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands v. Fletcher [1868] LR 3 HL 330, 340. From the point of view of the pedestrians the roads of this country have been rendered by the use of the motor vehicles highly dangerous. ` Hit and run' cases where the drivers of the motor vehicles who have caused the accidents are not known are increasing in number. Where a pedestrian without negligence on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle off social justice should have any meaning at all. In order to meet to some extent the responsibility of the society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission Chapter VIIA was introduced in the Act."

"11. In that case, this Court after taking of the provisions contained in S.92A has further observed:(1987 (3) SCR 404:AIR 1987 SC1690).

" It is thus seen that to a limited extent relief has been granted u/S. 92A of the Act to the legal representatives of the victims who have died on account of motor vehicles accidents. Now they can claim Rs. 15,000/- without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of a motor vehicular accident. To that extent the substantive law of the country stands modified.".

82. In paragraph (42), the Court has observed as under:

"42. The object underlying the enactment of Section 92A is to make available to the claimant compensation amount to the extent of Rs. 15,000/- in case of death and Rs. 7,500/- in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication of the claim u/S. 110A of the Act. This would be apparent from the provisions of S.92B of the Act. S.92B(2) of the Act provides that a claim for compensation u/S.92A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/S.92A and also in pursuance of any right on the principle of fault, the claim for compensation u/S.92A shall be disposed of as aforesaid in the first place. With a view to give effect to the said directive contained in S.92B of the Act, the Maharashtra Government has amended the Rules and has inserted special provisions in respect of claims under S.92A in Rules 291A, 291B, 297(2), 306A, 306B, 306C and 306D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition u/S.92A of the Act. The said object would be defeated if the Claims tribunal is required to hold a regular trial in the same manner as for adjudicating a claim petition u/S.110A of the Act. Moreover, for awarding compensation u/S.92A of the Act, the Claims Tribunal is required to satisfy itself in respect of the following matters....."

83. Thus, it is clear that the object underlying enactment of S.92A(S. 140 of the new Act) was to make available to the claimant compensation referred therein as expeditiously as possible. It is also held by the Supreme Court that the said object would be defeated if the claims Tribunal is required to hold regular trial in the same manner as for adjudicating a Claim Petition under S.110A of the Act.(S.166 of the new Act).

84. As we have observed earlier, after enacting S. 140 of the Act legislature still fell short of achieving its goal and S. 163-A came to be added. This very intention is again reiterated by the Supreme Court in case of K. NANDAKUMAR V. MANAGING DIRECTOR, THANTHAI PERIYAR TRANSPORT CORPORATION LTD. (1996 ACJ 555).

85. It was contended by the learned Advocate Mr. Mehta that if we are not required to read in S. 163-A right to plead the wrongful act or neglect or default of the victim, then as stated by way of illustration in MINU B. MEHTA's case (Supra), if a person commits suicide how can the Tribunal take care of such situation. Life is precious than anything in the world. If a life is lost by use of a motor vehicle, it is required to be compensated. It will be inhuman to sit in to inquire about the fault or no fault when the person aggrieved comes before the tribunal for a claim. Normally, it is not known till date, particularly, to the knowledge of both of us nor we are informed that any one has committed suicide by use of a motor vehicle, may be, by throwing himself in front of a motor vehicle. Suicide is committed by a person normally with all necessary precautions to see that the act is successfully completed. If there be any remote possibility to escape or to be unsuccessful in the commission of the act, then that mode will be avoided. Even if a person throws himself before the motor vehicle, there are less chances of his being killed than injured, and therefore, a person normally would not make an attempt to commit suicide by the use of a motor vehicle. What is required to be considered is an act which is an accident arising out of the use of a motor vehicle. In

case of MADRAS METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD V. KARMAL (1995 ACJ 1207), the Madras High Court while deciding a case under Workmen's Compensation Act, 1923 has referred to the meaning of the word `accident' which reads as under:

" The word `accident' is constantly used in ordinary English and, therefore, in law, in two senses, one much wider than the other. Strictly an occurrence can only be said to be accidental when it is due neither to the design nor to negligence. For, if an act be intentional it is clearly no accident: if it be the result of culpable negligence, then by due care it would have been avoided and the negligent person cannot be allowed to excuse himself by declaring it an accident. In this narrower sense of the word, an accident must be nobody's fault. The word `accident' generally denotes an event that takes place without one's foresight or expectations; an event which proceeds from an unknown cause, or is an unusual effect of a known cause and, therefore, not expected, chance, casualty, contingency; an event happening without the concurrence of the will of the person by whose agency it was caused. It differs from mistake in that the latter always supposes the operation of the will of the agent in producing the event although that will is caused by an erroneous impression on the mind.

An exception in a charter-party against `accident' does not include a snowstorm. An accident is not an ordinary occurrence, but something which happens out of the ordinary course of things. A snowstorm, however, is one of the ordinary operations of nature and may be described rather as an incident than an accident."

86. According to that definition the word `accident' generally denotes an event that takes place without one foresight or expectation; an event which proceeds from an unknown cause or is an unusual effect of a known cause, contingency. It is an event happening without the concurrence of the will of the person by whose agency it was caused.

87. Therefore we would like to say that even hypothetically if the person had rushed to the vehicle with an intention to commit suicide, then also, it is an event happening without the concurrence of the will of the person of whose agency it was caused as such person is not releived from his duty to take utmost care. It is he who has to show that he has taken utmost care, even to avoid accident, be it suicide. It is only when an occurrence takes place and as soon as it is an occurrence where the motor vehicle is involved, it is covered under S. 163-A and or S. 166 or u/S. 140. Accident referred in Sec. 140 and 163-A of the Act, is the occurrence wherein a motor vehicle is involved and the consequence of that occurrence is either fatal or disablement. If the Insurance Company is permitted to prove that insured is not at fault, though his vehicle is involved then the whole purpose of legislature of introducing S. 163-A will be frustrated.

88. The question is then how a claim under S. 163-A is to be decided. It is decided on an application or material received by the Tribunal disclosing necessary details required u/S. 163-A. On receipt of such application or material, insurer is to be served, who may reply the same on affidavit. Can the Insurance Company in its reply say that the accident has not taken place at all. Can the Insurance Company say that the person is neither dead nor injured, particularly when, the application is substantiated by necessary medical evidence. What may be available to the Insurance Company to dispute would be the age and the income of the victim. However, when the claimant comes with

necessary affidavit about the income, may or may not be supported by necessary evidence of the same, the same can be controverted by the Insurance Company provided they had with them necessary evidence. In absence of that, it is for the Tribunal to decide on the probability of preponderance as to what would be the age and acceptable income. So far as the age is concerned, the same can also be disputed or controverted by the Insurance Company but if the application is supported by medical evidence or documentary evidence with regard to the proof of age then the controversy as to age may not survive. If the Insurance Company is permitted to prove the negligence even of the victim or no negligence of the insured, then, the purpose for which the legislature introduced Section 163-A would be frustrated. It will be relevant to state that vide Section 163-B a person is entitled to claim compensation u/S. 140 or S. 163-A. U/S. 163-A minimum compensation provided is Rs. 50,000/- in case of fatal accident. Therefore, a claimant who contemplates for a higher compensation also on heads not available under S. 163-A may file an application under S. 166 and claim for an interim compensation under S. 140 of the Act, but this does not debar the claimant from filing application under S. 163-A of the Act. On the analogy of S. 140 as discussed above, S. 163-A is a substantive provision and application thereunder is required to be decided instantaneously from the material made available to the Tribunal. While deciding a claim u/S. 140 it is not necessary to decide the issue of negligence as section itself speaks of no fault liability. It will be relevant to state that claim u/S. 140 of the Act is a claim against the owner of the vehicle and the Insurance Company is made liable as an insurer and as he is required to indemnify the same, while in a claim u/S. 163-A the Insurance Company straightaway be made liable, if it is an insurer of the vehicle involved in the accident. When the legislature has provided a no fault liability even under S. 163-A by providing specific provision by way of subsection (2) there will be no question to prove fault of the victim. If such permission to prove fault of the claimants or the predecessors of the claimant, or no fault of insured against whom claim is preferred, it would not make any difference between the claim u/S. 166 and 163-A. This Court in the following judgments have held that S. 140 is a benevolent and commemorating piece of legislation and the scope of inquiry is without the proof of negligence:

1. NEW INDIA INSURANCE CO.LTD. AHMEDABAD V. MITHAKHAN DINAKHAN NOTIYAR & ORS. (1995(2) G.L.R. 1111 = (1994(2) G.L.H. 58.

2. MAHENDRAKUMAR KALYANJIBHAI V. HARESH BIPINCHANDRA PATHAK & ANR.(1992(2) G.L.R. 1199.

3. PANKAJBHAI CHANDULAL PATEL V. BHARAT TRANSPORT CO. AND ANOTHER. (1997 ACJ 993).

4. MUNSHIRAM D. ANAND V. PRAVINSINH PRABHATSINH. (1996(1) G.L.H. 513.

89. The question of negligence is not required to be gone into. There be negligence or not but the involvement of the vehicle makes them liable. In substance, it can be said that the scope of S. 163-A is that as soon as the accident occurs, it is signing of the blank cheque by the owner of the vehicle drawn on the insurer of the vehicle endorsed in favour of the claimants to be filled in by the Tribunal bearing in mind the structure provided in the Second Schedule of the Motor Vehicles Act. On

receiving necessary information, the Tribunal shall decide the multiplier and come to the conclusion about the income and a figure will be filled in the cheque, meaning thereby, award may be passed. This discharges the social responsibility of the State. When it was before the legislature to add or not S. 163-A. It has been made clear from the object that an adequate compensation to the victim of road accidents without going into longdrawn procedures be provided. Hence, in the object, they have used the word adequate, while in the Act in S. 166 the word `just' is provided. The word `adequate' was used by the legislature in its " Statement of Objects and Reasons" but did not transgress further in the Section incorporated by the legislature. Instead of either just or adequate compensation be provided, legislature predetermined the same and place in the statute book the Second Schedule for the same. As we have discussed earlier, ` predetermined' means decided in advance. Therefore, the question of it being `just' or `adequate' do not remain open or at large for the Tribunal to decide and has given an example at that stage. The legislature has behaved in a specific manner and based on experience and catena of decisions of High Courts and Apex Court has introduced a schedule providing for a predetermined compensation. For an application under S. 163-A, form is provided u/S. 165 of the Act but procedure is not prescribed as it is one prescribed u/S. 168 when an application u/S. 169 is filed. This suggests that a summary procedure is contemplated for award on the basis of predetermined compensation provided in Schedule. Central Government has made it open vide subsection (3) of Section 163-A to amend the same to keep pace with the varying cost of living in the country. On proper reading of S. 163-A an application thereunder is required to be decided on affidavits and documents annexed thereto. There will be no scope for any longdrawn trial as there would be no issues which needs to lead evidence by either of the parties. Vide subsection (2) of Section 163-A the question of negligence will not be in issue for deciding the said application. So far as the question of income is concerned, the same can be decided on affidavits supported by documents if there are any. Income would be the personal knowledge of the claimants having necessary evidence to support the same. So far as the question of age is concerned, it will be also within the special knowledge of the claimants and the same can be supported by them by documentary evidence be it by opinion of Doctor who performs post-mortem. So far as the injuries are concerned there will be necessary medical evidence to support the same. Such material evidence may be supported by the affidavit of the Doctor. Therefore, in our opinion, in view of the provisions of S. 163-A there is no scope for any trial and recording of evidence is intended to be dispensed with and can be dispensed with if the requirements of S. 163-A are satisfied.

90. The question is whether application under S. 163-A would be a substantive application or an interim application? Whether the substantive application would be under S. 166 of the Act? If application under S. 163-A would be an interim application and not a substantive one, then the legislature would not have limited the heads when claim under all the heads is available under S. 166 application. In an application under S. 163-A compensation is available only on two heads, namely, pecuniary loss and general damages and general damages are also with a certain ceiling while compensation under all other heads would be available in an application under S. 166 of the Act. To say that a particular section provides for an interim relief it also must provide for an interim relief for all the heads and not selected one. Therefore, in our opinion, application under S. 163-A is a substantive application for the heads referred therein. If we look at section 163-A, it is a special provision for payment of compensation on structured formula basis. If one looks at S. 140 it

specifically provides an amount to be paid by the owner irrespective of decision as to fault of the owner. In an application under S. 163-A authorised insurer is also liable to pay. In an application under S. 163-A in view of the provisions of subsection (2), it is again a no fault liability. There is no provision in S. 163-A like one as subsection (4) in S. 140 of the Act which suggests that claim under subsection (1) shall not be defeated or reduced by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made, nor shall the question of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. Absence of such provision like subsection 4 of S. 140, in S. 163-A is suggestive that application under S. 163-A is not subject to any other proceedings be separate or arising therefrom. The question is when application under S. 163-A is a substantive application, how an application under S. 166 can again be filed?. Would it not be barred by the provisions analogous to or like estoppel or res judicata or O.2 R.2 of Civil Procedure Code. In our opinion, it will not be barred by any such provision for the reason that S. 163-A is not available for full and complete compensation. It only provides for compensation for two heads and for one of which a ceiling is fixed while under S. 166 the ceiling is not provided for general damages.

91. For pecuniary loss, powers under S. 163-A in our opinion are unlimited however, with a ceiling for general damages. Schedule which refers to annual income of Rs. 40,000/- is not a ceiling in our opinion. We have stated earlier that reference to annual income beginning from Rs. 2000/- to Rs. 40,000/- is only illustrative and so far as the multipliers are concerned it is a guide as it covers the victims of all age group, namely, a victim of a day or above 65 years. If general damages are to be claimed in excess of the ceiling stated in the Second Schedule, then, one may file an application under S. 166 of the Act. The purpose of the legislature in introducing S. 163-A is to enhance further the purpose of introducing S. 140 of the Act. On analogy, one may say how such a huge claim can be awarded without a full fledged trial? However, it appears that from catena of decisions and by experience the legislature has realized that in cases of pecuniary loss what is required to be established before the Tribunal is the income of the victim and age of the victim and the fact of motor vehicular accident which is either fatal or has caused injury, with the name of owner and insurer of motor vehicle In an application under Sec. 166 of the Act a full fledged trial is held to collect such a data and on collecting such data compensation is decided after applying multiplier, on determining liability and extent thereof. Question of liability and extent thereof are not justiciable in application under Sec. 163-A of the Act. As soon as the data is provided, Tribunal can decide compensation on the basis of structured formula and that too instantly and expeditiously? Purpose of the legislature is to see that victims or injured get instant relief so far as the pecuniary loss is concerned because that loss suffered by them requires instant andimmediate relief may be from the next day of the accident. Any delay in grant of such compensation will make their life miserable and may read therein mockery of justice and mockery of claims Tribunal. It is a common experience that the claim applications are not heard expeditiously and it takes atleast 4 to 5 years to decide the same although sincere attempts are made. We have come across certain cases wherein it took about 7 years for the Tribunal to decide. It is with such an experience in the backdrop, the legislature appears to have been tempted to introduce S. 163-A. The Supreme Court in the case of U.P STATE ROAD TRANSPORT CORPORATION AND OTHER VS. TRILOK CHANDRA AND OTHERS(1996 ACJ 831) has said that Schedule II is a guide as there are innumerable mistakes in income

calculation and the figures arrived at. Therefore, we have said that the multipliers are a guide. It is very difficult to read from S. 163-A that it is subject to S. 166. Just to achieve the goal referred hereinabove the legislature has introduced predetermined structured formula to award compensation and the multipliers are arrived at and provided for with a view to have consistency and they are based on catena of cases.

92. It will be relevant to refer to S. 158(6) at this stage, which reads as under:

"As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer incharge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and were a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and Insurer."

93. It is obligatory on the part of the police officer to provide with the necessary information stated in this subsection and these details are the details which are required for deciding application u/S. 163-A as questions of negligence is not required to be gone into. Even the Tribunal can proceed on receipt of the information under subsection (6) of S. 158 of the Act and pass award after giving necessary audience to the Insurance Company and the owner of the vehicle involved.

94. An attempt was made by Mr. Pandya to contend that application u/S. 163-A would be limited for the only victims who had income upto Rs. 40,000/-per annum and those victims who had income beyond Rs. 40,000/per annum are required to go for claim u/S. 166 of the Act. Mr. Pandya contended that S. 163-A is provided for the person having low income with an instant relief. We are not able to agree with this contention for the reason that a statute cannot be interpreted that it may be hit by Article 14 of the Constitution of India. An instant need need not be only for the person with low income upto Rs. 40,000/-p.a. Persons with high income may also be equally needy if they loose the bread winner. Rs. 40,000/per annum comes to Rs. 3,500/- and odd per month. In our State and possibly in our country if the interpretation sought by Mr. Pandya is accepted, then, provision of S. 163-A will not be available to a person belonging to Class II and III of employment also. Some of the Class IV servants may also be deprived of the benefit of S. 163-A of the Act. Therefore any interpretation which creates an inequality by creating a class of poor and rich cannot be accepted as it hits the fundamental right of equality before law.

95. It is one of the contentions of Mr. Mehta on behalf of the Insurance Company that the act being a piece of benevolent legislation is required to be interpreted and implemented fairly and reasonably against all concerned and one cannot enrich oneself at the cost of the public fund without any reasonable cause. To substantiated this he has referred to the Second Schedule wherein a one day old child would be presumed to be earning Rs. 15000/-per year and would be entitled to a multiplier of 15. He has therefore contended that the Second Schedule be so constructed that there will be no unjust enrichment of any person. Mr. Mehta in our opinion, failed to appreciate that life is so precious that it can never be evaluated in terms of money. Any amount of money if paid against the

life of a person, in our opinion, is only a solace to the sufferer or one who has lost kith and kin. It can never be valued in terms of rupees and paise. Provision for compensation in the Act is a beneficial legislation and it is true that it should be fair and reasonable to all concerned. Is one ready to allow its child, be born few minutes ago to be killed for a particular sum? In this backdrop to say that the Second Schedule is likely to enrich someone. It will be inhuman to say so when accident takes place and a human life is either lost of damaged. What is prohibited is unjust enrichment. As soon as the accident takes place there is a reasonable cause to claim compensation and compensation if determined by the legislature on the basis of experience, good conscience and a catena of decisions, it cannot be said to be unreasonable. Legislature has provided the Second Schedule with a gesture to repair the damage as much as it can. Therefore, it has grouped the persons for the purpose of applying multiplier. When groupings are made some anomalies are likely creep in but they can be looked upon adversely only if they can be read as malafide or are with bad intention. Mr. Mehta has tried to demonstrate by illustration that the compensation provided to a child as in the case on hand, when child grows 15 years old that amount of compensation would be capitalised to Rs. 6,48,000/- and the legislature has not taken care of expenditure for his education, marriage, illness and several other imponderables. In our opinion, legislature has in its mind such expense which is in substance an investment for good cause and betterment of family. This apart, we cannot go into such ifs and buts. We have to go by reality and the fact that the accident has taken place and life is either lost or damaged. Can it be said that there would be no loss by loss of life?. As we said earlier, life cannot be equated with money and quantum is never a substitute. Quantum can never be the substitute, but is only a gesture by just compensation. It is only the wearer knows where the shoe pinches. It is only the family members or relatives of victims who know the effect of the loss suffered by them due to the accident. Therefore, it cannot be said that the Second Schedule has a probability of enriching someone much less unjustly.

96. On coming into operation of 1988 Act, it is compulsory for every motor vehicle to have a policy of insurance issued by a person who is an authorised insurer. It ensures the person or class of persons specified in the policy to the extent specified in Section 147(1)(b)(i) against any liability which may be incurred by him in respect of the death or bodily injury of any person including owner of the goods or his authorised representative carried in the vehicle or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. However, for certain eventuality the policy is not required as stated in the proviso . Under the Act, it is now compulsory to have a third party insurance. So any vehicle moving on the road is presumed to have an insurance and in particular third party insurance. Subsection (2) of Section 149 reads as under:

"(2) No sum shall be payable by an insurer under subsection (1) in respect of any judgment or award unless before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto and to defend the action on any of the following grounds, namely,-

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organized racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is not duly licensed, or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular."

97. Insurer is entitled to defences referred in subsection (2) of Section 149. To plead and prove the same, it is not necessary to lead any evidence. To prove the defence, production of the insurance policy would be sufficient.

98. We will now deal with the merits of the appeal which is on hand. The respondents had filed Motor Accident Claims Petition no. 776/95 under Sec. 166 of the Act to recover an amount of Rs. 2,50,000/- for the death of their son Master Mayur aged 6 years. Pending that application, they filed an application under S. 163-A being Exh.4 and no reply to that either by insurer or insured is filed, and the Tribunal has decided the same on the basis of the Second Schedule. This being a case of non earning person in fatal accident, the tribunal has presumed income of Rs. 15,000/-per annum and applied multiplier of 15 as provided in the Schedule for the age group upto 15 years. The Tribunal has also awarded Rs. 2000/for funeral expenses. No amount towards the loss of estate or medical expenses is awarded. The case of the Insurance Company is not considered and accepted as, in our opinion rightly because no defence is raised much less by filing written statement. It is mandatory on the part of the Tribunal in an application under S. 163-A to adopt predetermine formula statutorily provided in the Second Schedule to the Act. Section 163-A begins with a non obstante clause, and therefore, it has been rightly decided by the learned Tribunal irrespective of provisions of Ss. 140 and 166 of the Act. Therefore, so far as the merits are concerned, we do not find any reason to interfere with the same. However, it will remain open for the Tribunal to decide the

application under S. 166 which is pending before it qua the heads other than the one provided in the Second Schedule.

99. In view of the amendment, motor vehicles are required to be compulsorily insured and any special condition imposed in the policy will be only between the insurer and the insured where the third party is not concerned at all. Ours is a welfare State and this being a benevolent legislation, it is the social and legal duty of the Insurance Company to discharge. If the Insurance Company feels that their insured has committed breach of policy of insurance, it may be open for them to take necessary action against the insured. In view of the provision of compulsory insurance, it is presumed that any vehicle moving on the road is insured and liable to discharge any liability that may arise by the use of the vehicle.

In view of the above discussion, the appeal fails and is dismissed with costs.